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Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re  
SULLIVAN INTERNATIONAL  
GROUP, INC.,  
Debtor

Case No. 15-02281-LT7  
Chapter 7  
Adv. Proc. No.

## **COMPLAINT FOR:**

- (1) BREACH OF FIDUCIARY DUTY;**
- (2) ABUSE OF CONTROL;**
- (3) CORPORATE WASTE;**
- (4) UNJUST ENRICHMENT; AND**
- (5) DIRECTOR LIABILITY FOR AUTHORIZING ILLEGAL DISTRIBUTIONS UNDER CAL. CORP. CODE § 316**

## JURY DEMAND

CHRISTOPHER R. BARCLAY,  
chapter 7 trustee,

**Debtor:**

CHRISTOPHER R. BARCLAY,  
chapter 7 trustee,

Plaintiff,

**Plaintiff,**

V.

STEVE SULLIVAN, an individual;  
BRUCE QUATTRONE, an individual;  
MARK SMITH, an individual; KURT  
BROWN, an individual; ROSS EPSTEIN,  
an individual; STEVE WINCHESTER, an  
individual; JIM JANIS, an individual;  
JEFFREY GIGLIO, an individual; JOHN  
COWDERY, an individual; EDWARD  
STERNAGLE, an individual; and DOES  
1 through 50, inclusive,

### Defendants.

1 Plaintiff Christopher R. Barclay (the "Trustee"), the chapter 7 trustee for the  
 2 bankruptcy estate of Sullivan International Group, Inc. (the "Debtor"), files this  
 3 Complaint against Defendants Steve Sullivan, Bruce Quattrone, Mark Smith, Kurt  
 4 Brown, Ross Epstein, Steve Winchester, Jim Janis, Jeffrey Giglio, John Cowdery,  
 5 Edward Sternagle, and Does 1 through 50 (collectively, the "Defendants") and alleges  
 6 as follows:

7 **INTRODUCTION**

8 1. "There is not enough cash to pay the bills." — Defendant Bruce Quattrone  
 9 ("Quattrone") in his February 10, 2010 report to the Debtor's board of directors.

10 2. Rather than heeding this clear warning about the Debtor's dire financial  
 11 condition, the Defendants in this action engaged in a clear and unmistakable practice of  
 12 using the Debtor's assets to enrich themselves through illegal dividends, fraudulent  
 13 transfers, gross mismanagement of the Debtor, and use of the Debtor's assets to benefit  
 14 themselves at the expense of the Debtor and its creditors. The Defendants abused their  
 15 positions of power and control of the Debtor to protect their own personal interests and  
 16 the interests of their cronies, and lined their pockets at the expense of the Debtor and  
 17 its legitimate creditors. As alleged in more detail below, the Defendants breached their  
 18 fiduciary duties, abused their authority, wasted the Debtor's assets, unjustly enriched  
 19 themselves, and violated California law. Based on these actions, the Debtor suffered  
 20 damages in an amount subject to proof at trial but not less than \$10,000,000.00.

21 **JURISDICTION AND VENUE**

22 3. This Court has subject matter jurisdiction over this adversary proceeding  
 23 pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This adversary proceeding is a core  
 24 proceeding under 28 U.S.C. § 157(b)(2)(A), (F), (H) and (O). This adversary  
 25 proceeding arises under title 11 of the United States Code (the "Bankruptcy Code")  
 26 and arises in a case under the Bankruptcy Code pending before this Court.

27 4. Venue of this adversary proceeding is properly before this Court pursuant  
 28 to 28 U.S.C. § 1409(a).

5. This Complaint initiates an adversary proceeding within the meaning of Federal Rule of Bankruptcy Procedure 7001.

6. Pursuant to Local Bankruptcy Rule 7008-1, the Trustee consents to entry of final orders or judgment by the bankruptcy judge if any matters are determined to be core. Pursuant to Local Bankruptcy Rule 7008-2, the Trustee hereby demands a jury trial in this adversary proceeding.

## **PROCEDURAL BACKGROUND AND PARTIES**

7. On April 6, 2015 (the "Petition Date"), the Debtor commenced a case under chapter 11 of the Bankruptcy Code with this Court. On September 11, 2015 (the "Conversion Date"), the Bankruptcy Court entered an order converting the Debtor's case from chapter 11 to chapter 7.

8. The Trustee is the duly authorized representative of the Debtor's bankruptcy estate pursuant to section 704 of the Bankruptcy Code.

9. The Trustee is informed and believes, and on that basis alleges, that the Debtor is a corporation organized and existing under the laws of the State of California, with its principal place of business located in San Diego, California.

10. The Trustee is informed and believes, and on that basis alleges, that Defendant Steve Sullivan ("Sullivan") is an individual residing in San Diego County, California. The Trustee is further informed and believes, and on that basis alleges, that at all relevant times, Sullivan has held the positions of Chief Executive Officer for the Debtor and has been the Chairman of the Debtor's board of directors. The Trustee is further informed and believes, and on that basis alleges, that at all relevant times, Sullivan was a shareholder of the Debtor. More specifically, the Trustee is informed and believes, and on that basis alleges, that Sullivan owned a 66.37% interest in the Debtor as of the Petition Date.

11. The Trustee is informed and believes, and on that basis alleges, that Quattrone is an individual residing in San Diego County, California. The Trustee is further informed and believes, and on that basis alleges, that Quattrone served as the

1 Chief Financial Officer and/or Treasurer of the Debtor at all times relevant to the  
2 allegations in the Complaint. The Trustee is further informed and believes, and on that  
3 basis alleges, that Quattrone has held the position of Executive Vice President for the  
4 Debtor since approximately 2014. The Trustee is further informed and believes, and  
5 on that basis alleges, that at all relevant times prior to holding the position of Executive  
6 Vice President, Quattrone held the position of President of the Debtor. The Trustee is  
7 further informed and believes, and on that basis alleges, that Quattrone has been a  
8 member of the Debtor's board of directors since approximately January 2015. The  
9 Trustee is further informed and believes, and on that basis alleges, that at all relevant  
10 times, Quattrone was a shareholder of the Debtor. More specifically, the Trustee is  
11 informed and believes, and on that basis alleges, that Quattrone owned a 33.05%  
12 interest in the Debtor as of the Petition Date.

13       12. The Trustee is informed and believes, and on that basis alleges, that  
14 Defendant Mark Smith ("Smith") is an individual residing in Washington, D.C. The  
15 Trustee is further informed and believes, and on that basis alleges, that at all relevant  
16 times, Smith has held the position of Chief Operating Officer for the Debtor.

17       13. The Trustee is informed and believes, and on that basis alleges, that  
18 Defendant Kurt Brown ("Brown") is an individual residing in Carson City, Nevada.  
19 The Trustee is further informed and believes, and on that basis alleges, that at all  
20 relevant times, Brown has been a member of the Debtor's board of directors.

21       14. The Trustee is informed and believes, and on that basis alleges, that  
22 Defendant Ross Epstein ("Epstein") is an individual residing in San Diego County,  
23 California. The Trustee is further informed and believes, and on that basis alleges, that  
24 at all relevant times, Epstein has been a member of the Debtor's board of directors.

25       15. The Trustee is informed and believes, and on that basis alleges, that  
26 Defendant Steve Winchester ("Winchester") is an individual residing in Los Angeles  
27 County, California. The Trustee is further informed and believes, and on that basis  
28

1 alleges, that at all relevant times, Winchester has been a member of the Debtor's board  
2 of directors.

3       16. The Trustee is informed and believes, and on that basis alleges, that  
4 Defendant Jim Janis ("Janis") is an individual residing in Sante Fe County, New  
5 Mexico. The Trustee is further informed and believes, and on that basis alleges, that at  
6 all relevant times before January 1, 2015, Janis was a member of the Debtor's board of  
7 directors. The Trustee is further informed and believes, and on that basis alleges, that  
8 Janice ceased to be a member of the Debtor's board of directors on or about  
9 December 31, 2014.

10      17. The Trustee is informed and believes, and on that basis alleges, that  
11 Defendant Jeffrey Giglio ("Giglio") is an individual residing in San Diego County,  
12 California. The Trustee is further informed and believes, and on that basis alleges, that  
13 Giglio held the position of Senior Vice President for the Debtor between  
14 approximately March 2009 and February 2012. The Trustee is further informed and  
15 believes, and on that basis alleges, that at all relevant times, Giglio was a shareholder  
16 of the Debtor. More specifically, the Trustee is informed and believes, and on that  
17 basis alleges, that Giglio owned an approximately .58% interest in the Debtor as of the  
18 Petition Date.

19      18. The Trustee is informed and believes, and on that basis alleges, that  
20 Defendant John Cowdery ("Cowdery") is an individual residing in Contra Costa  
21 County, California. The Trustee is further informed and believes, and on that basis  
22 alleges, that at all relevant times before approximately April 25, 2013, Cowdery was a  
23 member of the Debtor's board of directors. The Trustee is further informed and  
24 believes, and on that basis alleges, that Cowdery ceased to be a member of the Debtor's  
25 board of directors on or about April 25, 2013.

26      19. The Trustee is informed and believes, and on that basis alleges, that  
27 Defendant Edward Sternagle ("Sternagle") is an individual residing in San Diego  
28 County, California. The Trustee is further informed and believes, and on that basis

1 alleges, that at all relevant times through 2015, Sternagle held the position of  
2 Corporate Secretary for the Debtor.

3 20. Sullivan, Quattrone, Brown, Epstein, Winchester, Janis, and Cowdery are  
4 collectively referred to herein as the "Director Defendants."

5 21. The Trustee is unaware of the true names and capacities of the Defendants  
6 sued herein as Does 1 through 50, inclusive, and therefore sues said Doe Defendants  
7 by such fictitious names. The Trustee is informed and believes, and on that basis  
8 alleges, that each of the Doe Defendants are legally responsible in some manner for the  
9 events and happenings alleged herein, and that the damages alleged herein were  
10 proximately caused by their conduct. The Trustee will seek leave of court to amend  
11 this Complaint to allege the Doe Defendants' true names and capacities when  
12 ascertained.

13 **LEGAL DUTIES OWED BY THE DEFENDANTS**

14 22. As alleged above, each of the Defendants served as either a director,  
15 officer, or both of the Debtor in the four (4) year period prior to the Petition Date. The  
16 Trustee is further informed and believes, and on that basis alleges, that some or all of  
17 the Defendants may have also been directors and/or officers of the Debtor's  
18 subsidiaries and/or other joint venture entities, including, without limitation, Sullivan  
19 Weston Services JVA, LLC, Sullivan Weston Services JVB, LLC, Sullivan ACI  
20 Federal Services, Engineering and Environmental Solutions JV, Sullivan Construction  
21 Jet Ventures, Inc. f/k/a Sullivan and Charter JV, Inc. and/or Sullivan and Charter JV,  
22 Alliance Compliance Group JV, and SEQ Vets JV. The Trustee is informed and  
23 believes, and on that basis alleges, that some of the Defendants' actions alleged in this  
24 Complaint may have been taken either nominally or in fact on behalf of one or more of  
25 these subsidiaries and/or other joint venture entities. The Trustee's intention in  
26 drafting this Complaint is to include all claims against all Defendants regardless of  
27 whether the alleged actions were taken in the Defendants' capacities as directors and  
28

1 officers of the Debtor and/or one of the Debtor's subsidiaries and/or other joint venture  
 2 entities.

3       23. As officers and/or directors of the Debtor, the Defendants owed a  
 4 fiduciary duty of care to the Debtor and its shareholders and creditors. Such fiduciary  
 5 duty included the obligation to serve in good faith, in a manner that the Defendants  
 6 believed to be in the best interests of the Debtor and its shareholders and creditors.  
 7 Such duty also required the Defendants to refrain from, among other things, engaging  
 8 in intentional misconduct or a knowing and culpable violation of law, acts or  
 9 omissions that they believed to be contrary to the best interests of the Debtor or its  
 10 shareholders and creditors or that involved the absence of good faith, engaging in any  
 11 transaction from which they derived an improper personal benefit, and acts or  
 12 omissions showing a reckless disregard for the Defendants' duty to the Debtor or its  
 13 shareholders and creditors in circumstances in which they were aware, or should have  
 14 been aware of a risk of serious injury to the Debtor or its shareholders and creditors.

15       24. The Defendants also owed duties to creditors of the Debtor in the case of  
 16 insolvency, including the duty to avoid actions that would divert, dissipate, or unduly  
 17 risk corporate assets that might otherwise be used to pay creditors' claims, and to  
 18 refrain from undertaking acts involving self-dealing or the preferential treatment of  
 19 creditors.

## GENERAL ALLEGATIONS

21       25. As alleged in more detail below, the Trustee is informed and believes, and  
 22 on that basis alleges, that Defendants, through a series of actions designed to place  
 23 their individual interests ahead of the interests of the Debtor and its creditors,  
 24 ultimately caused the Debtor's business to fail resulting in this bankruptcy proceeding.

25       26. The Debtor was formed in November 1998. Prior to the Conversion Date,  
 26 the Debtor was in the business of providing environmental consulting and engineering  
 27 services and construction management to public and private sector clients, including  
 28 the Environmental Protection Agency and Department of Defense. It was

1 headquartered in San Diego, California, with regional and project office locations  
 2 throughout the United States. The Debtor is a Service Disabled Veteran Owned  
 3 Business, which qualifies it to receive so-called "set aside" contracts under federal law.  
 4 As of the Petition Date, the Debtor employed 180 employees and claimed the  
 5 capability to scale up to 500 personnel.

6       27. The Debtor is a Subchapter S corporation under the Internal Revenue  
 7 Code. As a result, any profits or losses generated by the Debtor are passed through the  
 8 Debtor to the Debtor's shareholders and are taxed at the shareholder level.

9       28. The Trustee is informed and believes, and on that basis alleges, that the  
 10 Debtor's financial troubles date back to at least 2005. In 2005, the Debtor discontinued  
 11 its clean construction division because of a \$4,000,000 loss on a problem project,  
 12 which resulted in a substantial decrease in working capital and the need to settle with  
 13 one of its creditors and contract parties (a company called Tetra Tech), which matures  
 14 in 2018. As of the Petition Date, the Debtor still owed Tetra Tech \$1,660,069.44.

15       29. The Trustee is informed and believes, and on that basis alleges, that, in  
 16 late 2009 or early 2010, the Debtor initially hired Quattrone as an outside consultant.  
 17 Quattrone conducted an extensive investigation into the Debtor's financial condition  
 18 and business plan, conducting more than twenty-five (25) interviews and reviewing,  
 19 among other documents, the Debtor's financial statements, 2010 Draft Business  
 20 Plans/Budgets, 2008 Draft Audits, October 2009 Comparative Financial Statement,  
 21 and an email from the Debtor's Chief Executive Officer (Sullivan) "highlighting  
 22 concerns and issues as he saw them."

23       30. On February 10, 2010, Quattrone submitted a comprehensive twenty (20)  
 24 page report to the Debtor's board of directors describing in detail the Debtor's serious  
 25 financial problems and "severe cash position." Quattrone's report included the  
 26 following findings: (a) "Working Capital is in an under-water position ... [d]epending  
 27 on how you rank the current debt, the range is anywhere between \$1.0mm - \$3.2mm,"  
 28 (b) the Debtor "is delinquent in paying its bills," (c) the Debtor's cash position was

1 "dire," and (d) the Debtor was essentially "borrowing today from tomorrow's invoices  
 2 to pay for yesterday's payables." Quattrone summed up the Debtor's tenuous financial  
 3 situation in very blunt terms: "There is not enough cash to pay the bills."

4       31. As of the beginning of June 2010, Neal Clements ("Clements") owned  
 5 2,838,925 shares of the Debtor's common stock and was a member of the Debtor's  
 6 board of directors. On or about June 7, 2010—less than six (6) months after receiving  
 7 the Quattrone report detailing the Debtor's serious financial problems—the Debtor's  
 8 board of directors authorized the Debtor to repurchase 1,200,000 of Clements' shares  
 9 for \$0.42 per share. In total, the Debtor's board of directors agreed to pay Clements  
 10 \$504,000 plus interest at 10% per annum. The Debtor's board of directors caused the  
 11 Debtor to enter into a Redemption Agreement, Secured Promissory Note and Security  
 12 Agreement with Clements. Under those documents, the Debtor granted Clements a  
 13 security interest on all or substantially all of the Debtor's assets securing payment of  
 14 the purchase price thereby elevating his rights above the Debtor's other creditors. The  
 15 Trustee is informed and believes, and on that basis alleges, that Clements directly  
 16 participated in the board's decision to approve the repurchase of his shares and that he  
 17 exerted undue influence on his fellow board members.

18       32. The Trustee is informed and believes, and on that basis alleges, that on or  
 19 about December 31, 2010, Sullivan borrowed the sum of \$60,000 from the Debtor.

20       33. Between April 1, 2011 and March 31, 2012, despite the Debtor's serious  
 21 financial problems and lack of retained earnings, the Debtor's board of directors  
 22 authorized, ratified, or otherwise allowed distributions by the Debtor to the company's  
 23 shareholders totaling approximately \$946,679.01. All of these distributions were paid  
 24 solely to or for the benefit of the Debtor's directors and officers—Sullivan, Quattrone,  
 25 and Giglio.

26       34. The Trustee is informed and believes, and on that basis alleges, that in  
 27 2012 the Debtor paid Sullivan a salary of \$1,044,955.00 and paid Quattrone a salary of  
 28

1 \$1,263,059.00. These salary amounts were in addition to the substantial illegal  
2 distributions paid by the Debtor to Sullivan and Quattrone.

3 35. On or about July 28, 2011, the Debtor's board of directors authorized the  
4 Debtor to repurchase Clements' remaining 1,638,925 shares of the Debtor for \$0.75 per  
5 share or \$1,229,193.75 total. Again, the Debtor's board of directors caused the Debtor  
6 to enter into a Redemption Agreement, Secured Promissory Note and Security  
7 Agreement with Clements. These documents obligated the Debtor to pay Clements  
8 monthly installments of \$18,551.83 for seven (7) years beginning on August 1, 2011.  
9 Under these documents, the Debtor granted Clements a further security interest on all  
10 or substantially all of the Debtor's assets securing payment of the purchase price  
11 thereby elevating his rights above the Debtor's creditors.

12 36. In total, the Debtor paid Clements \$1,172,266.10 under his stock  
13 repurchase agreements. Despite these massive payments, as of the Petition Date, the  
14 Debtor still owed Clements \$857,756.42. The Trustee is informed and believes, and  
15 on that basis alleges, that there was no legitimate business justification for the board's  
16 approval of the Clements stock repurchase agreements, that the terms of those  
17 agreements were grossly one-sided in favor of Clements, and that the significant  
18 financial burden placed on the Debtor by these agreements only exacerbated the  
19 Debtor's already tenuous financial position. The Trustee is further informed and  
20 believes, and on that basis alleges, that the Debtor's board of directors approved the  
21 Clements stock repurchase agreements primary because Clements was either a current  
22 or former member of the board and/or officer.

23 37. The Trustee is informed and believes, and on that basis alleges, that the  
24 Debtor's board of directors authorized and caused the Debtor to enter into similar  
25 unfair and one-sided stock repurchase agreements with other former shareholders,  
26 including, without limitation, William Ulmer, John Kirschbaum, and David Sullivan.

27 38. On or about June 29, 2012, the Debtor and Bridge Bank N.A. ("Bridge  
28 Bank") entered into a Business Financing Agreement, whereby Bridge Bank agreed to

1 provide financing to Debtor. The Debtor's obligations under the Bridge Bank Business  
2 Finance Agreement were personally guaranteed by Sullivan and Quattrone. The  
3 Trustee is informed and believes, and on that basis alleges, that the Debtor almost  
4 immediately defaulted on its obligations under the Bridge Bank Business Financing  
5 Agreement.

6       39. Less than six (6) months after entering into the Business Financing  
7 Agreement with Bridge Bank, the Debtor entered into a Forbearance Agreement and  
8 First Business Financing Modification Agreement dated as of December 28, 2012.

9       40. Over the next two years, the Finance Agreement was amended and  
10 modified by a series of seven (7) additional forbearance agreements, (a) a Second  
11 Business Financing Modification Agreement dated as of June 7, 2013, (b) a Business  
12 Financing Modification Agreement dated as of September 24, 2013, (c) a Forbearance  
13 Agreement and Fourth Business Financing Modification Agreement dated as of  
14 April 17, 2014, (d) a Forbearance Agreement and Fifth Business Financing  
15 Modification Agreement dated as of July 15, 2014, (e) a Forbearance Agreement and  
16 Sixth Business Financing Modification Agreement dated as of August 27, 2014, (f) a  
17 Forbearance Agreement and Seventh Business Financing Modification Agreement  
18 dated as of November 12, 2014, and (g) a Forbearance Agreement and Eighth Business  
19 Financing Modification Agreement dated as of December 29, 2014.

20       41. On or about September 21, 2012, the United States Air Force awarded a  
21 Contract No. FA8903-09-D-8589, Task Order No. 0003, to one of the Debtor's  
22 subsidiaries, Sullivan Construction Jet Ventures, Inc. f/k/a Sullivan and Charter JV,  
23 Inc. and/or Sullivan and Charter JV ("SCJV"). Pursuant to this award, the Air Force  
24 agreed to pay SCJV a "Firm Fixed Price of \$34,945,391.76" for completing what is  
25 referred to as the Southeast Performance Based Remediation ("SE PBR") project.

26       42. The Trustee is informed and believes, and on that basis alleges, that  
27 between April 1, 2012 and March 31, 2013, the Debtor's board of directors authorized,  
28 ratified, or otherwise allowed distributions by the Debtor to the company's

1 shareholders totaling an additional approximately \$806,898.97. Again, these  
2 distributions were paid solely to or for the benefit of the Debtor's directors and  
3 officers—Sullivan, Quattrone, and Giglio.

4       43. The Trustee is informed and believes, and on that basis alleges, that in  
5 2013 the Debtor paid Sullivan a salary of \$619,238.00 and paid Quattrone a salary of  
6 \$468,419.00. These salary amounts were in addition to the substantial illegal  
7 distributions paid by the Debtor to Sullivan and Quattrone.

8       44. According to the Debtor's Statement of Financial Affairs filed under  
9 penalty of perjury in the Debtor's bankruptcy case, the Debtor suffered losses of  
10 \$867,240.00 in 2013.

11       45. The Trustee is informed and believes, and on that basis alleges, that the  
12 Debtor's already poor financial condition was further damaged by the federal budget  
13 "sequestration" that took effect beginning on March 1, 2013.

14       46. The Trustee is informed and believes, and on that basis alleges, that, in  
15 April 2013, the Debtor suffered a cash crisis and, as a result, defaulted on payments  
16 due to critical vendors, including Park Construction Company (approximately  
17 \$1,900,000.00) and Meyer Contracting (approximately \$500,000.00).

18       47. The Trustee is informed and believes, and on that basis alleges, that  
19 because of cash flow problems, in or about November 2013, the Debtor stopped  
20 making payments to Energy Solutions for work on the Oronogo mine project. By  
21 April 1, 2014, Energy Solutions asserted that it was owed approximately \$3.1 million  
22 in connection with the Oronogo mine project, of which approximately one-half was  
23 owed by the Debtor.

24       48. The Trustee is informed and believes, and on that basis alleges, that,  
25 despite the Debtor's financial problems and obvious need for cash, in or about 2013,  
26 the Debtor either "wrote off" or "forgave" Sullivan's \$60,000.00 debt to the Debtor  
27 arising out of the December 31, 2010 loan. The Trustee is further informed and  
28 believes, and on that basis alleges, that Debtor never received any interest or principal

1 payments from Sullivan in connection with this loan. The Trustee is further informed  
2 and believes, and on that basis alleges, that the Debtor's board of directors either  
3 approved the writing off or forgiveness of Sullivan's \$60,000.00 debt to the Debtor or  
4 were negligent in failing to supervise and/or monitor Sullivan's self-dealing with the  
5 Debtor.

6       49. The Trustee is informed and believes, and on that basis alleges, that,  
7 despite the Debtor's serious financial problems, Sullivan routinely used his corporate  
8 credit card to purchase personal luxury items, including designer suits, and caused the  
9 Debtor to pay the charges for these items. The Trustee is further informed and  
10 believes, and on that basis alleges, that Sullivan's personal charges were often flagged  
11 by the Debtor's accountants and/or auditors as improper business expenses and that, as  
12 a result, the Debtor was forced on several occasions to revise its books and records to  
13 reflect the Debtor's payments for these items as deemed "distributions" to Sullivan and  
14 to make additional distributions to the Debtor's other shareholders to balance the  
15 company's books. The Trustee is further informed and believes, and on that basis  
16 alleges, that the Defendants other than Sullivan knew about this practice and either  
17 ratified or allowed it or were negligent in failing to properly monitor Sullivan's  
18 activities.

19       50. The Trustee is informed and believes, and on that basis alleges, that  
20 between April 1, 2013 and March 31, 2014, the Debtor's board of directors authorized,  
21 ratified, or otherwise allowed distributions by the Debtor to the company's  
22 shareholders totaling an additional approximately \$183,237.89. As with the previous  
23 distributions, these distributions were paid solely to or for the benefit of the Debtor's  
24 directors and officers—Sullivan, Quattrone, and Giglio.

25       51. The Trustee is informed and believes, and on that basis alleges, that in  
26 2014 the Debtor paid Sullivan a salary of \$203,184.80 and paid Quattrone a salary of  
27 \$117,766.40. These salary amounts were in addition to the substantial illegal  
28 distributions paid by the Debtor to Sullivan and Quattrone.

1       52. According to the Debtor's Statement of Financial Affairs filed under  
2 penalty of perjury in the Debtor's bankruptcy case, the Debtor suffered losses of  
3 \$839,559.00 in 2014.

4       53. The Trustee is informed and believes, and on that basis alleges, that the  
5 Debtor's cash crisis worsened in early- to mid-2014. The Trustee is further informed  
6 and believes, and on that basis alleges, that, in April 2014, the Debtor defaulted on  
7 payment to SE PBR project subcontractor, Weston Solutions, Inc. ("Weston")  
8 (approximately \$770,000.00).

9       54. The Trustee is informed and believes, and on that basis alleges, that, at  
10 some point in mid-2014, the Debtor entered into an off-books arrangement with  
11 Energy Solutions to divert payments to Energy Solutions outside of Bridge Bank  
12 borrowing restrictions to placate Energy Solutions and forestall disclosure by Energy  
13 Solutions to federal contracting authorities that the Debtor had defaulted on required  
14 vendor payments. The Trustee is further informed and believes, and on that basis  
15 alleges, that the Debtor's Agreement with Energy Solutions provided that Energy  
16 Solutions would perform substantially greater work than originally contracted and  
17 receive 100% of contract payments from the Environmental Protection Agency until  
18 the agreed amount was repaid on past due invoices. The Trustee is further informed  
19 and believes, and on that basis alleges, that, beginning in May 2014, Energy Solutions  
20 was paid through an off-books bank account.

21       55. The Trustee is informed and believes, and on that basis alleges, that the  
22 Debtor provided Bridge Bank with a Borrowing Base Certificate on or about  
23 November 15, 2014, which indicated that the Debtor was "over advanced" on the  
24 parties' Business Finance Agreement by approximately \$1.5 million.

25       56. The Trustee is informed and believes, and on that basis alleges, that as a  
26 result of the November 15, 2014 Borrowing Base Certificate, the Debtor engaged in  
27 work-out negotiations with Bridge Bank. The Trustee is further informed and  
28

1 believes, and on that basis alleges, that Bridge Bank asked the Debtor to find a  
2 replacement lender.

3       57. The Trustee is informed and believes, and on that basis alleges, that in  
4 December 2014, the Debtor entered into an agreement with Coral Capital to replace  
5 Bridge Bank as the Debtor's principal lender. The Trustee is further informed and  
6 believes, and on that basis alleges, that the Debtor's management eventually  
7 determined that the agreement with Coral Capital would not provide adequate funding  
8 to payoff Bridge Bank and leave the Debtor with any remaining borrowing capacity  
9 and, as a result, the Debtor refused to move forward on the agreement with Coral  
10 Capital. The Trustee is further informed and believes, and on that basis alleges, that  
11 Coral Capital filed a complaint against the Debtor for, among other things, breach of  
12 the parties' agreement and foreclosure of security interests on January 28, 2015 in the  
13 Supreme Court of the State of New York, *Coral Capital Solutions, LLC v. Sullivan*  
14 *International Group, Inc., et al.*, Case No. 650175/2015.

15       58. The Trustee is informed and believes, and on the basis alleges, that, on or  
16 about December 15, 2014, the Debtor retained the law firm of Sullivan Hill Lewin Rez  
17 & Engel APLC to help the Debtor prepare for a chapter 11 filing.

18       59. In December 2014, the Debtor also retained the services of 3C Advisors &  
19 Associates, Inc. ("3C"), a financial advisory firm. Steve Jones ("Jones") is a Managing  
20 Director at 3C. At all times relevant to the allegations in this Complaint, David  
21 Prolman ("Prolman") was the head of the Corporate Advisory Services Practice at 3C.

22       60. On or about December 29, 2014, at or about the same time that the Debtor  
23 entered into the Forbearance Agreement and Eighth Business Financing Modification  
24 Agreement with Bridge Bank, Sullivan, Quattrone, and the Bruce A. Quattrone Trust–  
25 1993, signed agreements under which they pledged the following additional collateral  
26 to secure their personal guaranties of the Debtor's obligations under the Bridge Bank  
27 Business Finance Agreement: (a) an account owned by Bruce A. Quattrone Trust–  
28 1993 and maintained at Charles Schwab; (b) real property owned by Quattrone and

1 commonly described as 8610 Herrington Way, San Diego, California; (c) real property  
2 owned by Sullivan and commonly described as 8377-8367 Nottingham Road, Nisswa,  
3 Minnesota; and (d) real property owned by Sullivan and commonly described as  
4 370 Marshall Avenue, Unit 409, St. Paul, Minnesota.

5 61. Trustee is informed and believes, and on that basis alleges, that, beginning  
6 in early 2015, the Debtor began to delay payment to critical vendors on the Hawaii  
7 MAAC contract (Prometheus—\$628,650.00) and the Sultrac contract (Denovo  
8 Constructors—\$1,687,182.00).

9 62. The Trustee is informed and believes, and on that basis alleges, that,  
10 shortly after 3C was retained, Jones presented the Debtor with a valuation model that  
11 suggested the Debtor was worth approximately \$18,000,000.00. The Trustee is further  
12 informed and believes, and on that basis alleges, that 3C advised Sullivan that the best  
13 means to maximize this value for the benefit of all parties was to pursue a sale of the  
14 Debtors' assets and/or business. The Trustee is further informed and believes, and on  
15 that basis alleges, that during these discussions, Sullivan inquired about the potential  
16 "tax consequences" of a potential sale of the Debtor's assets and/or business.

17 63. The Trustee is informed and believes, and on that basis alleges, that either  
18 3C or Sullivan contacted CohnReznick LLP, a national professional services and  
19 accounting firm headquartered in New York. Apparently, the tax professionals at  
20 CohnReznick LLP indicated that the firm needed transaction specifics in order to  
21 analyze and explain the tax consequences of a potential asset and/or business sale.  
22 Unsatisfied, Prolman offered to arrange an introduction between Sullivan and the tax  
23 professionals at Squar Milner.

24 64. The Trustee is informed and believes, and on that basis alleges, that on or  
25 about February 9, 2015, Sullivan, Quattrone, and Prolman met with Keith Troutman  
26 ("Troutman"). Troutman is the Tax Partner-in-Charge, Tax Services, for the  
27 San Diego office of Squar Milner. The Trustee is further informed and believes, and  
28 on that basis alleges, that during this meeting Sullivan was specifically advised that a

1 sale of the Debtor's assets/business for millions would result in millions of dollars in  
2 personal tax liability for Sullivan. The Trustee is further informed and believes, and  
3 on that basis alleges, that Squar Milner advised Sullivan that because the Debtor is a  
4 Subchapter S corporation and Sullivan owns more than two-thirds of the shares of the  
5 Debtor and had little or no tax basis, Sullivan would possibly face millions in potential  
6 tax liability from the sale of the Debtor's assets/business even if he and the other  
7 shareholders received little or nothing from the sale after payment of the Debtor's  
8 secured creditors.

9       65. The Trustee is informed and believes, and on that basis alleges, that after  
10 the meeting with Squar Milner, Prolman reiterated to Sullivan that sale of the Debtor's  
11 assets/business remained the best option for the Debtor and explained that Sullivan  
12 might be required to file for personal chapter 7 bankruptcy to address his tax liabilities.  
13 The Trustee is further informed and believes, and on that basis alleges, that Sullivan  
14 unequivocally stated to Prolman that he would not consider filing personal chapter 7  
15 bankruptcy.

16       66. Based on the tax advice received from Squar Milner and the personal  
17 guaranties of the Debtor's liability to Bridge Bank by Sullivan and Quattrone, the  
18 Defendants essentially abandoned any real efforts to sell the Debtor's business for fair  
19 value and, instead, engaged in a strategy designed solely to funnel as much money as  
20 possible to Bridge Bank without creating any tax liability for Sullivan. The  
21 Defendants—including Sullivan and Quattrone—shifted their focus away from trying  
22 to maximize value for the benefit of the Debtor and its creditors to protecting their  
23 personal interests.

24       67. On March 19, 2015, Bridge Bank issued its Notice of Default to Debtor  
25 under the Finance Agreement and Eighth Forbearance Agreement.

26       68. The Trustee is informed and believes, and on that basis alleges, that  
27 between April 1, 2014 and March 31, 2015, the Debtor's board of directors authorized,  
28

1 ratified, or otherwise allowed additional distributions by the Debtor to the company's  
2 shareholders totaling approximately \$375,515.58.

3       69. According to the Debtor's Statement of Financial Affairs filed under  
4 penalty of perjury in the Debtor's bankruptcy case, the Debtor suffered losses of  
5 \$144,326.00 in January and February 2014.

6       70. The Trustee is informed and believes, and on that basis alleges, that the  
7 Defendants were aware that the Debtor was scheduled to receive approximately  
8 \$2.0 million in payments under the Hawaii MAAC and Sultrac contracts in late March  
9 or early April 2015. The Trustee is informed and believes, and on that basis alleges,  
10 that the Defendants intentionally timed the Debtor's chapter 11 filing to occur after  
11 these funds were received, deposited them into the Debtor's "sweep" account with  
12 Bridge Bank, and the funds were in fact "swept" by Bridge Bank and applied to the  
13 Debtor's obligations under the Bridge Bank Business Finance Agreement.

14       71. The Trustee is informed and believes, and on that basis alleges, that the  
15 Debtor's board of directors met by telephone on March 30, 2015 and authorized the  
16 Debtor's chapter 11 filing. The Trustee is further informed and believes, and on that  
17 basis alleges, that the Debtor's chapter 11 filing was delayed primarily to allow Bridge  
18 Bank time to "sweep" the payments made to the Debtor under the Hawaii MAAC and  
19 Sultrac contracts and apply those funds to the Debtor's obligations under the Bridge  
20 Bank Business Finance Agreement. The Trustee is further informed and believes, and  
21 on that basis alleges, that these actions were taken specifically to reduce Sullivan's and  
22 Quattrone's potential liability under their personal guaranties of the Debtor's  
23 obligations under the Bridge Bank Business Finance Agreement.

24       72. During the week ending April 3, 2015, immediately preceding the Petition  
25 Date, the Debtor received collections totaling \$2,020,663.00 from its billings on the  
26 Hawaii MAAC and Sultrac contracts, all of which were paid to Bridge Bank.

27       73. The Debtor filed for chapter 11 bankruptcy protection on April 6, 2015.  
28

1       74. The Trustee is informed and believes, and on that basis alleges, that the  
2 Debtor's board of directors failed to properly supervise and oversee the Debtor's  
3 operations leading up to and after the Debtor's chapter 11 filing. The Trustee is further  
4 informed and believes, and on that basis alleges, that the Debtor's board of directors  
5 met only one or twice in the several months leading up to the Debtor's chapter 11 filing  
6 and did not meet at all after the Petition Date, essentially abdicating its responsibility  
7 and duties to Sullivan and Quattrone.

8       75. The Trustee is informed and believes, and on that basis alleges, that,  
9 shortly before the Petition Date, Sullivan caused the Debtor to pay Smith (the Debtor's  
10 Chief Operating Officer) for his accrued paid time off. The Trustee is informed and  
11 believes, and on that basis alleges, that Smith was not entitled to this payment under  
12 California law or otherwise, and that the payment to Smith was made solely as a favor  
13 to Smith because of his status as an officer of the Debtor.

14       76. The Trustee is informed and believes, and on that basis alleges, that  
15 shortly before the Petition Date, Prolman was tasked with drafting the bankruptcy  
16 engagement letter between 3C and the Debtor. Prolman provided a draft of the  
17 engagement letter to Jones, which included a "Consultation Performance Fee" of four  
18 percent (4%) for non-refinancing transactions. Jones instructed Prolman to increase  
19 the fee to five percent (5%) and explained that Sullivan had agreed to the increased fee  
20 (which would potentially cost the Debtor as much as \$100,000.00) based on a side deal  
21 with Jones under which 3C would hire Sullivan at the conclusion of the bankruptcy  
22 case. Prolman objected to this arrangement and the fee was eventually reduced to four  
23 percent (4%), but this conduct clearly demonstrates Sullivan's willingness to place his  
24 personal interests above the Debtor's interests.

25       77. According to the Debtor's books and records, in the four (4) years  
26 immediately preceding the Petition Date, the Debtor's board of directors authorized  
27 and the Debtor actually made approximately \$2,312,331.45 in distributions to the  
28

1 Debtor's shareholders. These distributions were made despite the fact that the Debtor  
2 was losing money and in desperate need.

3       78. The distributions alleged herein constituted transfers of an interest of the  
4 Debtor in property. The Trustee is informed and believes, and on that basis alleges,  
5 that the Debtor made these distributions to the Debtor's shareholders with the actual  
6 intent to hinder, delay, or defraud one or more of its creditors. In the alternative, the  
7 Trustee is further informed and believes, and on that basis alleges, that the Debtor was  
8 (a) insolvent at the time of the distributions, or became insolvent as a result of the  
9 distributions, or (b) intended to incur or believed that it would incur debts that would  
10 be beyond its ability to pay as such debts matured at the time of the distributions. As  
11 such, the Trustee alleges that these distributions constituted improper and fraudulent  
12 transfers under section 548 of the Bankruptcy Code and/or California's version of the  
13 Uniform Fraudulent Transfer Action (sections 3439 through 3439.12 of the California  
14 Civil Code).

15       79. The distributions alleged herein also violated both sections 500 and 501 of  
16 the California Corporations Code. The Trustee is informed and believes, and on that  
17 basis alleges, that in approving these distributions the Debtor's board of directors did  
18 not determine, and could not have determined in good faith, that: (1) the amount of  
19 retained earnings of the Debtor immediately prior to the distribution equaled or  
20 exceeded the proposed distribution plus the "preferential dividends arrears amount;" or  
21 (2) immediately after the distribution, the value of the Debtor's assets would equal or  
22 exceed the sum of its total liabilities plus the "preferential rights amount." In the  
23 alternative, the Trustee is further informed and believes, and on that basis alleges, that  
24 these distributions were illegal because at the time of the distribution the Debtor was,  
25 or as a result became, likely to be unable to meet its liabilities (except those whose  
26 payment was otherwise adequately provided for) as they matured.

27       80. The Trustee alleges that the distributions specified above were illegal  
28 under California law and constituted a substantial cash drain on the Debtor that

1 materially damaged the Debtor's business and ability to meet its debts and other  
2 obligations. The Trustee further alleges that the Debtor received no value in return for  
3 making these substantial distributions and the distributions were made solely to benefit  
4 and enrich the Debtor's insiders, including the Debtor's executives and board members  
5 (who were also the Debtor's sole shareholders).

6       81. The Trustee alleges that the Defendants breached their duty to the Debtor  
7 and creditors by authorizing or allowing these improper, illegal, and fraudulent  
8 distributions to the Debtor's shareholders in violation of California and federal  
9 bankruptcy law.

10      82. Shortly after the Petition Date, the Debtor filed documents with the  
11 Bankruptcy Court claiming that it and 3C had been working on the potential sale of the  
12 Debtor's core operating assets as an ongoing concern. The Debtor vowed to continue  
13 to work with 3C to find a suitable purchaser for its core business operating assets.  
14 These statements were untrue. In reality, Sullivan had long since determined that a  
15 sale of the Debtor's business for fair value was not going to happen because of the  
16 likely tax consequences to him arising out of a sale.

17      83. At the same time, the Debtor submitted documents with the Bankruptcy  
18 Court estimating under penalty of perjury that its core business assets (not including  
19 general intangibles, goodwill, and assembled workforce) were worth approximately  
20 \$10,398,167.

21      84. The Trustee is informed and believes, and on that basis alleges, that, on or  
22 about June 19, 2015, Bridge Bank contacted the Debtor because the Debtor had written  
23 checks on its operating account that exceeded the account balance. The Trustee is  
24 further informed and believes, and on that basis alleges, that Bridge Bank requested  
25 instructions as to which checks should be honored and which should be returned for  
26 insufficient funds. Trustee is further informed and believes, and on that basis alleges,  
27 that Sullivan instructed Bridge Bank to pay the check covering the Debtor's  
28

1 headquarters rent in the amount of \$39,953.52 because the lease was personally  
2 guaranteed by Sullivan.

3 85. Prolman eventually resigned from 3C in protest because he became  
4 convinced that Sullivan was focused solely on attempting to manipulate the chapter 11  
5 case for his personal economic gain. Before resigning, on June 23, 2015, Prolman sent  
6 a letter to James P. Hill (the Debtor's chapter 11 counsel) outlining what Prolman  
7 contended were serious ethical breaches by Jones and Sullivan.

8 86. Both before and after the Petition Date, the Defendants either  
9 intentionally or negligently mismanaged the Debtor's business. Rather than attempting  
10 to maximize the value of the Debtor's business and/or assets, the Defendants focused  
11 instead on funneling as much money as possible to Bridge Bank to pay down the  
12 Debtor's obligations to Bridge Bank (because of the personal guarantees by Sullivan  
13 and Quattrone). In the process, the Defendants materially damaged the value of the  
14 Debtor's business and/or assets.

15 87. For example, the Trustee is informed and believes, and on that basis  
16 alleges, that the Defendants caused or allowed the Debtor to use funds that were  
17 earmarked to pay subcontractors and other creditors to instead pay down the Bridge  
18 Bank debt. The Trustee is further informed and believes, and on that basis alleges, that  
19 the Defendants caused or allowed the Debtor to falsely represent to its customers  
20 (primarily the United States) that certain subcontractor and other debts were paid  
21 when, in fact, the money had been used to pay Bridge Bank. In doing so, the  
22 Defendants showed complete disregard for their duties to the Debtor and creditors  
23 generally.

24 88. The Trustee is informed and believes, and on that basis alleges, that  
25 SCJV's right to payment under the SE PBR project was potentially one of the largest  
26 and most valuable assets of the Debtor's bankruptcy estate. By the Fall of 2014, SCJV  
27 was owed millions on account of work performed on the SE PBR contract that it was  
28 unable to collect. In turn, SCJV had stopped making payments to its subcontractor,

1 Weston. In addition to the earlier missed payment to Weston in April 2014 for  
2 \$770,000.00, Weston was owed approximately \$1 million at the end of 2014 on  
3 account of additional unpaid SE PBR related invoices. In early 2015, Weston  
4 suspended work on the project altogether, and asserted that it was owed approximately  
5 an additional \$300,000.

6 89. On or about August 7, 2015, the Debtor submitted a claim for  
7 \$1,267,810.00 to the Air Force under the SE PBR project. The claim falsely  
8 represented that it was being asserted by both the Debtor and Weston as part of the  
9 "SCJV Team." The Air Force and Weston now apparently contend that the SE PBR  
10 claim submitted by the Debtor was not authorized by Weston and contains false and  
11 inaccurate information. In addition, the Air Force contends that SCJV breached the  
12 terms of the SE PBR agreement.

13 90. Based on these allegations, the Air Force has since informed the Trustee  
14 that it will seek to cancel the SE PBR contract due to, among other things, alleged  
15 breaches of the contract by SCJV and the allegedly improper/unauthorized claim. The  
16 Trustee is informed and believes, and on that basis alleges, that the Defendants are  
17 responsible for the actions cited by the Air Force as grounds to terminate the SCJV  
18 contract and resulting loss of millions of dollars in revenue to the Debtor.

19 91. In sum, on information and belief, the Trustee alleges that the Defendants  
20 engaged in a years' long practice of using the Debtor's assets to enrich themselves  
21 through illegal dividends, fraudulent transfers, gross mismanagement of the Debtor,  
22 and use of the Debtor's assets to benefit themselves at the expense of the Debtor and its  
23 creditors. The Trustee is further informed and believes, and on that basis alleges, that  
24 the above-referenced actions of the Defendants, as well as other acts of  
25 mismanagement and self dealing, had the ultimate effect of causing the Debtor's  
26 business operations to fail and rendering it unable to pay its debt owed to creditors.  
27  
28

1                   **FIRST CLAIM FOR RELIEF**

2                   **(Breach of Fiduciary Duty – All Defendants)**

3                 92. The Trustee incorporates by reference the allegations of paragraphs 1  
4 through 91, inclusive, as if fully set forth herein.

5                 93. The Defendants were and are required to use their abilities to control and  
6 manage the Debtor in a fair, just, and equitable manner in order to ensure that the  
7 company complied with applicable laws and contractual obligations, to refrain from  
8 abusing their positions of control, and not to favor their own interests at the expense of  
9 the Debtor.

10               94. The Defendants violated their fiduciary duties to the Debtor, including  
11 without limitation their duties of care, good faith, honesty and loyalty by, among other  
12 things, (a) approving the buyout of Clements' shares in 2011 for \$1,229,193.75,  
13 (b) authorizing \$2,312,331.45 in fraudulent transfers and/or illegal distributions to the  
14 Debtor's shareholders, (c) mismanaging the Debtor's business, (d) authorizing the  
15 payment of excessive compensation to Sullivan and Quattrone; (e) failing to  
16 adequately oversee the Debtor's business and essentially abdicating their duties and  
17 obligations to Sullivan and Quattrone; and (f) placing their own personal interests  
18 above those of the Debtor.

19               95. The wrongful conduct described in this Complaint was not due to an  
20 honest error in judgment, but rather to the Defendants' gross mismanagement, bad  
21 faith, and/or reckless disregard of the rights and interests of the Debtor and its creditors  
22 and for acting without the reasonable and ordinary care which they owed the Debtor.

23               96. As a result of the foregoing, the Defendants have participated in harming  
24 the Debtor and have breached fiduciary duties owed to the Debtor. Further, the  
25 Defendants knowingly aided, encouraged, cooperated and/or participated in, and  
26 substantially assisted the other Defendants in the breaches of their fiduciary duties.

97. By reason of the foregoing, the Debtor has sustained and will continue to sustain substantial damages and injuries in an amount subject to proof at trial but not less than \$10,000,000.00.

## **SECOND CLAIM FOR RELIEF**

## **(Abuse of Control – All Defendants)**

98. The Trustee incorporates by reference the allegations of paragraphs 1 through 97, inclusive, as if fully set forth herein.

99. By virtue of their positions and financial holdings in the Debtor, the Defendants exercised control over the Debtor and its operations, and owed duties as controlling persons to not to use their positions of control within the Debtor for their own personal interests and contrary to the interest of the Debtor.

100. The Defendants' conduct amounts to an abuse of their control of the Debtor, in violation of their obligations to the Debtor. The Defendants knowingly aided, encouraged, cooperated and/or participated in, and substantially assisted the other Defendants in their abuse of control.

101. As a result of the Defendants' abuse of control, the Debtor has sustained and will continue to sustain substantial damages and injuries in an amount subject to proof at trial but not less than \$10,000,000.00.

## **THIRD CLAIM FOR RELIEF**

## **(Corporate Waste – All Defendants)**

102. The Trustee incorporates by reference the allegations of paragraphs 1 through 101, inclusive, as if fully set forth herein.

103. As alleged in detail above, the Defendants had a fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Debtor and in the use and preservation of its property and assets, and the highest obligation of fair dealings.

104. The Defendants wasted the Debtor's corporate assets. For example, the Defendants diverted corporate assets by paying illegal dividends and/or making fraudulent transfers to the Debtor's shareholders during periods when the company was

insolvent, by abandoning efforts to liquidate company assets solely because such a liquidation would have resulted in personal tax liability to the company's shareholders, and by diverting funds to Bridge Bank instead of using them to continue business operations or pay other creditors, instead of using those corporate assets for their intended purpose.

105. As a result of the Defendants' actions, the Debtor has sustained and will continue to sustain substantial damages and injuries in an amount subject to proof at trial but not less than \$10,000,000.00.

## **FOURTH CLAIM FOR RELIEF**

### **(Unjust Enrichment – All Defendants)**

106. The Trustee incorporates by reference the allegations of paragraphs 1 through 105, inclusive, as if fully set forth herein.

107. The Defendants derived compensation, fees, and other benefits from the Debtor and were otherwise unjustly enriched during the time in which the wrongful practices occurred, to the detriment of the Debtor. The Defendants profited by engaging in the wrongful conduct set forth in the Complaint above. The Defendants also wrongfully converted funds belonging to the Debtor.

108. The Defendants' enrichment is directly and causally related to the detriment of the Debtor.

109. These benefits were accepted by the Defendants under such circumstances that it would be inequitable for them to be retained without payment. As alleged above, the Defendants breached their fiduciary duties and/or abused their positions of control to the Debtor and, therefore, the Defendants are not justified to retain the benefits conferred upon them.

## **FIFTH CLAIM FOR RELIEF**

## **(Authorization of Illegal Distributions Pursuant To California Corporations**

## **Code Section 316 – Director Defendants and Does 1 through 50)**

110. The Trustee incorporates by reference the allegations of paragraphs 1 through 109, inclusive, as if fully set forth herein.

6        111. The Trustee is informed and believes, and on that basis alleges, that the  
7 Director Defendants authorized and the Debtor actually made not less than  
8 \$1,365,652.44 in distributions to the Debtor's shareholders in the three (3) years prior  
9 to the Petition Date. The Trustee is further informed and believes, and on that basis  
10 alleges, that these distributions were illegal in that they violated both sections 500 and  
11 501 of the California Corporations Code.

12        112. The Trustee is informed and believes, and on that basis alleges, that one or  
13 more creditor of the Debtor's bankruptcy estate held claims against the Debtor that  
14 arose before the date of the distributions alleged herein, and that those creditors did not  
15 consent to such distributions.

16        113. The Trustee is informed and believes, and on that basis alleges, that the  
17 Director Defendants voted in favor of or otherwise authorized all illegal distributions  
18 made by the Debtor and are therefore personally liable for the amount of such  
19 distributions under section 316 of the California Corporations Code.

114. Due to the illegal distributions alleged herein, the Debtor has been  
damaged in an amount to be established at trial but not less than \$1,365,652.44.

## **REQUEST FOR JUDGMENT**

The Trustee prays for judgment as follows:

A. Awarding compensatory damages against all Defendants, jointly and severally, in an amount to be proven at trial but not less than \$10,000,000.00;

B. Awarding punitive damages at the maximum amount permitted by law;

C. Awarding pre-judgment interest, as well as reasonable attorneys' fees and other costs, to the full extent allowed by law;

1 D. Awarding such other relief as this Court may deem just and proper.

2 DATED: December 4, 2015

3 FINLAYSON TOFFER  
4 ROOSEVELT & LILLY LLP

5 By: \_\_\_\_\_ */s/ Jesse F. Finlayson*  
6 Jesse S. Finlayson

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11 Attorneys for Christopher R. Barclay,  
12 Chapter 7 Trustee  
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<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> Christopher R. Barclay, chapter 7 trustee		<b>DEFENDANTS</b> Steve Sullivan, Bruce Quattrone, Mark Smith, Kurt Brown, Ross Epstein, Steve Winchester, Jim Janis, Jeffrey Giglio, John Cowdery, Edward Sternagle, and DOES 1 through 50, inclusive
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) Finlayson Toffer Roosevelt & Lilly LLP 15615 Alton Parkway, Suite 250 Irvine, CA 92618 Phone: 949.759.3810 / Fax: 949.759.3812		<b>ATTORNEYS</b> (If Known)
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee		<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) breach of fiduciary duty; abuse of control; corporate waste; unjust enrichment; and director liability for authorizing illegal distributions under Cal. Corp. Code § 316		
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<p><b>FRBP 7001(1) – Recovery of Money/Property</b></p> <input type="checkbox"/> 11 - Recovery of money/property - § 542 turnover of property <input type="checkbox"/> 12 - Recovery of money/property - § 547 preference <input type="checkbox"/> 13 - Recovery of money/property - § 548 fraudulent transfer <input checked="" type="checkbox"/> 14 - Recovery of money/property - other		
<p><b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b></p> <input type="checkbox"/> 21 - Validity, priority or extent of lien or other interest in property		
<p><b>FRBP 7001(3) – Approval of Sale of Property</b></p> <input type="checkbox"/> 31 - Approval of sale of property of estate and of co-owner - § 363(h)		
<p><b>FRBP 7001(4) – Objection/Revocation of Discharge</b></p> <input type="checkbox"/> 41 - Objection / revocation of discharge - § 727(c),(d),(e)		
<p><b>FRBP 7001(5) – Revocation of Confirmation</b></p> <input type="checkbox"/> 51 - Revocation of confirmation		
<p><b>FRBP 7001(6) – Dischargeability</b></p> <input type="checkbox"/> 66 - Dischargeability - § 523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny		
(continued next column)		
<p><b>FRBP 7001(6) – Dischargeability (continued)</b></p> <input type="checkbox"/> 61 - Dischargeability - § 523(a)(5), domestic support <input type="checkbox"/> 68 - Dischargeability - § 523(a)(6), willful and malicious injury <input type="checkbox"/> 63 - Dischargeability - § 523(a)(8), student loan <input type="checkbox"/> 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 - Dischargeability - other		
<p><b>FRBP 7001(7) – Injunctive Relief</b></p> <input type="checkbox"/> 71 - Injunctive relief - reinstatement of stay <input type="checkbox"/> 72 - Injunctive relief - other		
<p><b>FRBP 7001(8) Subordination of Claim or Interest</b></p> <input type="checkbox"/> 81 - Subordination of claim or interest		
<p><b>FRBP 7001(9) Declaratory Judgment</b></p> <input type="checkbox"/> 91 - Declaratory judgment		
<p><b>FRBP 7001(10) Determination of Removed Action</b></p> <input type="checkbox"/> 01 - Determination of removed claim or cause		
<p><b>Other</b></p> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§ 78aaa et.seq. <input type="checkbox"/> 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)		
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law <input checked="" type="checkbox"/> Check if a jury trial is demanded in complaint		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$ 10,000,000.00
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Sullivan International Group, Inc.		BANKRUPTCY CASE NO. 15-02281-LT7
DISTRICT IN WHICH CASE IS PENDING Southern	DIVISIONAL OFFICE San Diego	NAME OF JUDGE Hon. Laura S. Taylor
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Jesse S. Finlayson		
DATE 12/4/15	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Jesse F. Finlayson	

## INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.